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Issue Date: 07 April 2005

CASE NO.: 2004-LHC-1155

OWCP NO.: 07-166954

IN THE MATTER OF

DELBERT A. WADE,
Claimant

v.

FRIEDE GOLDMAN HALTER, INC.,
SIGNAL INTERNATIONAL, INC.,
Employers

and

AIG CLAIM SERVICES, INC.,
Carrier

APPEARANCES:

D.A. Bass-Frazier, Esq.
On behalf of Claimant

Douglas Bagwell, Esq.
On behalf of Employer Friede Goldman

Gina Tompkins, Esq.
On behalf of Employer Signal and Carrier

BEFORE: C. RICHARD AVERY
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et. seq., (The Act), brought by Delbert A. Wade (Claimant) against Friede Goldman Halter, Inc. (hereinafter "Friede Goldman"), Signal International, Inc. (hereinafter "Signal") and AIG Claim Services, Inc. (Carrier). The formal hearing was conducted in Gulfport, Mississippi on January 13, 2005. Each party was represented by counsel, and each presented documentary evidence, examined and cross examined the witnesses, and made oral and written arguments.[1] The following exhibits were received into evidence: Joint Exhibit 1, Claimant's Exhibits 1-9, Employer Friede Goldman's Exhibits 1-22, and Employer Signal/Carrier's Exhibits 1-32. This decision is based on the entire record.[2]

Stipulations

Prior to the hearing, the parties entered into joint stipulations of facts and issues which were submitted as follows:

1. The date of injury/accident was January 11, 2003;[3]
2. Whether the injury was in the course and scope of employment is disputed;[4]
3. An employer/employee relationship existed between Claimant and Friede Goldman at the time of the accident;
4. The date Employer was advised of the injury is disputed;
5. Notices of Controversion were filed May 6, 2003 (Friede Goldman) and November 14, 2003 (Signal);
6. An informal conference was held on December 12, 2003;
7. The average weekly wage at the time of injury was $724.53;
8. Nature and extent of disability is disputed:

[1] The parties were granted time post hearing to file briefs. This time was extended up to and through March 24, 2005.

[2] The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript Pages- "Tr. __"; Joint Exhibit- "JX __, p.__"; Employer Friede Goldman's Exhibit- "EX __, p.__"; Employer Signal/Carrier's Exhibit "ECX__, p.__"; and Claimant's Exhibit- "CX __, p.__".

[3] Signal and Claimant so stipulate, but Freide Goldman does not stipulate that an accident/injury occurred on January 11, 2003. *See* Tr. 175.

[4] Signal is "not in the position" to so stipulate because Claimant "wasn't employed by Signal on January 11, 2003." Tr. 176.

(a) Temporary total disability is disputed;
(b) Benefits have not been paid;
(c) Medical benefits have not been paid;

9. Permanent disability and impairment rating are "unknown"; and
10. Date of maximum medical improvement is "unknown."

Issues

The unresolved issues in this proceeding are:

1. Responsible employer;
2. Fact of on-the-job injury (causation);
3. Nature and extent of disability;
4. Reasonable and necessary medical treatment as a result of the alleged injury;
5. Section 7 medical benefits; and
6. Attorney fees, interest, and penalties.

Statement of the Evidence

Testimony of Delbert A. Wade

Claimant testified that he lives in Bayou La Batre, Alabama. He is a high school graduate and attended one quarter of college at the University of South Alabama. Claimant began working for Friede Goldman Halter in 1996 until 2001 when there was a reduction in force, but he returned to work on August 22, 2002. During his absence from Friede Goldman, he worked for Offshore Inland as a nightshift structural fitter foreman. He held this position until February 2002 when there was a reduction in force, and Claimant then worked for Rodriguez Construction, a shrimp boat building business, as a structural fitter. Tr. 97.

Claimant described his position as structural fitter with Friede Goldman. He stated that he was responsible for cutting out and placing steel in accordance with a blueprint for the oilrig. He fits the pieces of steel and makes any necessary alterations, and performs tacking which consists of holding the pieces in place until the welder comes behind him. Tr. 100. Claimant said that he had the same job duties from August 2002 through May 2003.

Claimant recalled sustaining an injury to his right knee on Saturday, January 11, 2003. He said that he and his helper, Edward Steele, had been assigned an area to work in and they were "coming down from the top going out to the next level."

They were carrying their tools, and Claimant had his welding lead on his shoulder. Claimant testified that he came down the first flight of stairs and turned to go down the next flight, and on that landing, his "upper body turned" but his "right knee did not." Tr. 100. He said that he told Mr. Steele that he felt and heard a "pop." He sat down, and when he was able to get up again, he went to find Chris Brewer, his immediate supervisor. He told Mr. Brewer of the incident and Mr. Brewer sent him to the medic. He said that Mr. Brewer did not complete a written report.

Claimant testified that he went to the medic, who he identified as Mr. Sprouse. He stated that he sat on the examination table, Mr. Sprouse touched both sides of his leg and moved his leg, and told Claimant it was probably a strain. He recalled Mr. Sprouse telling him to "take it easy," to stay off his knee if possible, and to come back on Monday if he still had pain for further evaluation. Claimant said he asked Mr. Sprouse if he intended to make a report, and Mr. Sprouse said he would. Claimant did not see Mr. Sprouse write anything, but gave Mr. Sprouse his name and badge number.

Claimant returned to work on Monday, January 13, 2003. His knee hurt, but did not hurt as much as it had the day he injured it. Claimant continued working in the shipyard, and at the time was working on the CLYDE BOUDREAUX. He later switched rigs and went to the THERALD MARTIN in late January or early February.[5] Tr. 106. Claimant testified that his knee "got worse" in that it "got to be a nagging pain." He iced his knee at home and sometimes got it wrapped at work. Claimant said he spoke with "quite a few people" at Signal about his knee, including his foreman on the THERALD MARTIN, Donald Sayers, and David Wheeler, the general foreman. He said he spoke with David Melton, Cliff Lane and L.A. Hughly. Tr. 107.

Claimant was not asked to provide a written statement regarding his injury until April 2003. He said that Signal was going to send him to Dr. Doster, whom he had seen previously, the last time being January 10, 2003, for completion of his pre-employment physical examination. Claimant stated that at the time of his physical he was taking medication for his shoulder pain resulting from a previous unrelated injury. He was taking Vicoprofin and Lortab but has stopped because he was becoming addicted to the medications. Tr. 112.

[5] Friede Goldman was taken over by Signal on January 29, 2003. Prior to his accident of January 11, 2003, Claimant had passed a physical to continue his employment with Signal after the takeover, and that is what he did. At the time of the accident, however, he was still in the employ of Friede Goldman. Apparently, the transition was orderly, with many of the jobs and workers remaining the same.

Claimant discussed the discrepancies between the pre-employment physical form contained in Signal's personnel records and that found in Dr. Doster's records. Claimant stated he did not recall writing "strain on ligament" or "pulled back muscle." He said that those statements "don't sound like" the way he would talk. Tr. 120. Claimant did not recall injuring his right knee prior to January 11, 2003, and had not previously obtained medical treatment for his right knee.

Claimant saw Dr. Cooper in April 2003. He was going to see Dr. Doster, but because Dr. Doster wanted an MRI performed and Friede Goldman refused, Dr. Doster would not see Claimant. Claimant said that Dr. Cooper detected a "large lump" and wanted an MRI performed, and Claimant's wife scheduled the MRI. Claimant's MRI was performed on May 20, 2003, and Claimant stated the MRI has not been paid for. Claimant returned to Dr. Cooper who told him there was a tear in the medial meniscus and there were baker's cysts on Claimant's knee, so Dr. Cooper referred Claimant to an orthopedic surgeon. Claimant saw Dr. White-Spunner who recommended arthroscopic surgery. Claimant has not had the surgery because he cannot afford it. He said that Dr. White-Spunner's treatment has not been paid for, and the bill comes to his home. Tr. 124.

Claimant testified that Signal made accommodations so that he could continue to work within the restrictions Dr. Cooper assigned him. Claimant recalled Mr. David Melton wrapping his knee approximately three or four times. Tr. 126. Claimant was laid off by Signal on May 31, 2003, and stated that he has looked for work since that time. Claimant worked for Delta Tug, where he did some light burning and welding. Tr. 127. He said Delta Tug was aware of his knee injury. He worked for Delta Tug for approximately six to eight weeks and was paid fifteen dollars per hour. Claimant also worked for Austin Plant Maintenance at Degussa Corporation, where he worked at the shutdown of a plant. Claimant worked for John Brannon, who was his supervisor at Austin, repairing trailers for five to six weeks. Tr. 130. Claimant worked for Russell Collier, driving a truck to Point ala Hache, Louisiana to pick up oysters and bring them back to Alabama. Mr. Collier paid Claimant one hundred dollars per trip and Claimant made six trips. Tr. 131. Claimant said work is currently slow in his town, but he has to work to support his two small children.

On cross-examination, Claimant testified that his knee has worsened over time. He did not miss any work due to his knee injury. Tr. 133. He acknowledged that the work he performed as a structural fitter was heavy and strenuous work which required frequent climbing, stooping, bending, standing and walking, and required him to carry and pull welding leads and tool buckets. Claimant agreed

that his work hours increased from fifty hours per week at Friede Goldman to seventy hours per week at Signal. Tr. 137. He acknowledged he did not receive medical care for his knee until April 25, 2003 when he saw Dr. Cooper.

Claimant reiterated that on the day of his injury, he reported the incident to Chris Brewer who told him to go to the medic and he did so immediately, which was in the morning. Tr. 141. Claimant testified that he treated with Dr. Coulter for his shoulder problem, and saw Dr. Coulter after he injured his knee in January 2003. He said that he may have mentioned a problem regarding his knee "in passing" to Dr. Coulter in early February 2003. Tr. 148. Claimant said he was aware that Dr. Coulter's records do not reflect any mention of knee pain until April 2003. Claimant stated that it was possible he did not mention his knee problem to Dr. Coulter because it was Friede Goldman's policy that injured workers see company doctors. He explained that after April 2003, he had already discussed his injury with safety personnel at Signal and told Cliff Lane that he was going to see Dr. Coulter. Tr. 151.

Claimant stated that the handwriting on the pre-employment physical form which stated "pulled back muscle" looked like his handwriting, but maintained that other notations on the form were not his handwriting. Tr. 153. Claimant said he did not remember writing "strained ligament," though it looked like his handwriting. Claimant agreed that in his deposition, he denied writing "strained ligament" but admitted writing "pulled back muscle 1991" and "shoulder, right, 1984." Tr. 156. Claimant was aware that Dr. Doster testified in his deposition that in Claimant's pre-employment physical, he wrote that Claimant had a previous knee injury, which meant to Dr. Doster that he had discussed the issue with Claimant. However, Claimant stated he had no memory of discussing a previous knee injury with Dr. Doster.

Claimant testified that since being laid off by Signal, the work he has performed has not caused him pain. Claimant hopes to perform more truck driving trips for Mr. Collier. He had recently performed volunteer work at his church, where he loaded sixty-five cases of peanut butter which weighed approximately five to ten pounds each.

Claimant stated he did not injure his knee at any time while employed by Signal. He stated that when he reported the injury to Signal, he was reporting the January 11, 2003 injury. Tr. 166. Claimant stated that immediately following his injury, his knee pain was not as bad as it had been on the day of the injury for a period of about a week. However, after that week, Claimant had knee pain which

appeared to get worse after the end of February. Claimant could not say what caused his pain to worsen. He did not think the increase in pain was due to walking between rigs. Claimant stated that to accommodate his pain after the injury, he altered the way he walked and climbed and was more conscious of his surroundings. He did not recall doing anything to worsen his pain. He said that his job duties were not more intense or more physical with Signal than they had been with Friede Goldman. Tr. 169. Claimant clarified that in his deposition he testified that to the best of his knowledge he may have written the statements on the pre-employment physical form, but after further reflection, he was not certain. Claimant testified that his knee was bothering him at the hearing, because it was "gnawing" at him. Tr. 171. Claimant stated that while working for Signal, Mr. Steele continued to be his helper and would sometimes carry the tool bucket and the welding lead. He stated that after the injury he would avoid stooping and squatting. Tr. 172. On redirect, Claimant estimated that he earned no more than approximately $3,250 from working for Delta Tug. Tr. 174.

Testimony of Edward Steele

Mr. Steele testified that he currently works for VT Halter, but he previously worked with Claimant at Friede Goldman and was with Claimant when he was injured. Mr. Steele said that Claimant was coming down the stairs and said that his knee went out, so Mr. Steele and Claimant sat for awhile. Mr. Steele could not recall whether Claimant reported his knee injury to anyone. On cross-examination, Mr. Steele stated that he did not see Claimant stumble or twist his knee, he just remembered Claimant saying "my knee, my knee." Mr. Steele said he and Claimant were carrying welding leads at the time. He did not remember how long they sat down or whether they resumed working. He could not recall whether Claimant had complained of knee problems prior to that day.

Testimony of Lloyd C. Brewer

Mr. Brewer testified that he is currently employed by Signal International as a structural fitter and has been employed by Signal since it took over Friede Goldman Halter. While employed at Freide Goldman, Mr. Brewer was a fitter foreman, and was Claimant's supervisor on the day of his accident. Mr. Brewer recalled Claimant reporting an injury. Specifically, Claimant told Mr. Brewer that he hurt his knee, though Mr. Brewer could not recall when Claimant reported the injury or if he gave any specifics. Mr. Brewer did recall telling Claimant to go to first aid, but could not remember whether Claimant did so. Mr. Brewer identified EX 12, p.29 as the accident report he later completed on April 21, 2003, but acknowledged that some time had passed between the accident and the time he gave his statement. On cross-examination, Mr. Brewer could not recall how long

Claimant worked for him, when Claimant left the job that Mr. Brewer was supervising, or when Claimant left Signal's employ.

Testimony of Phillip R. Sprouse

Mr. Sprouse testified that he is currently employed by VT Halter Marine as a safety supervisor, and has held the position for two and a half months. He previously worked for Friede Goldman until Signal assumed the operation in January 2003, and continued working for Signal as a safety representative until November 2003. While working for Friede Goldman and Signal, he only worked on weekends. He stated that in this position he was the "medical person," and because the yard was so small, he performed safety operations as well.

Mr. Sprouse identified a document located at EX 12 p.30 as his handwritten report in response to an accident investigation. Tr. 38. He recalled that Claimant had mentioned that his knee hurt and Mr. Sprouse instructed him to come to the medical office. Mr. Sprouse said that Claimant stopped by the medical office briefly and "said that it really wasn't hurting him that much." Tr. 39. Mr. Barnes told Claimant to follow up with Cliff Lane who scheduled employees to see physicians. Mr. Barnes said that as part of his normal procedure he follows up on workers and learned that Claimant never returned to have his knee examined.

Mr. Sprouse testified that Claimant reported his injury at the end of the work day, and discovered that Claimant did not follow up the following Monday. Mr. Sprouse stated that he only documents visits if a medical examination is performed.

On cross-examination, Mr. Sprouse testified that his hours of work were 6:30 a.m. to 4:30 p.m. on the weekends. He clarified that the company's policy for documenting visits to the medical office was if he "actually physically touch [the] patient," documentation was required. Tr. 44. He explained that during the weekends, it was not possible to schedule appointments with physicians for injured employees, which necessitated workers to return and see Cliff Lane who worked Monday through Friday. Mr. Sprouse clarified that he had seen Claimant earlier in the day on the yard when Claimant complained of knee pain, and Claimant came to the medical office at the end of the day. He stated that he called Mr. Lane on the following Monday around 8:00 a.m. and learned that Claimant had not been in to see Mr. Lane. He acknowledged that this was the only call he made to Mr. Lane about Claimant.

Testimony of Jerry Ronk

Mr. Ronk testified that he is employed by Signal as a general foreman and had previously worked for Friede Goldman as a general structural foreman. Tr. 50. Mr. Ronk was employed as a general foreman on January 11, 2003. Claimant was not under Mr. Ronk's immediate supervision, but Claimant was supervised by Chris Brewer, a foreman who worked for Mr. Ronk. Mr. Ronk did not recall Claimant claiming he injured his knee in January 2003. He stated no one told him Claimant injured his knee. He became aware of Claimant's alleged injury "a couple months later" when he was questioned by the safety department.

On cross-examination, Mr. Ronk stated that it would have been the foreman's obligation to report an injury that was relayed by a worker. He said that Claimant would have reported any injury to Chris Brewer, his foreman. On recross, Mr. Ronk recalled signing applications to become a Signal employee in January or December.

Testimony of David Melton

Mr. Melton testified that he is employed by Signal as the Environmental Health and Safety Coordinator and has held the position for approximately one year. Tr. 56. He previously worked for Friede Goldman as a safety representative, where his duties included monitoring safety compliance and hazardous situations on the job sites and in facilities. He occasionally filled in in the medical office because he had training in that field, but it was not a common occurrence. Mr. Melton stated that he had no knowledge of the actual event of Claimant's injury, but was aware that following the event, in conversations which occurred on the yard, Claimant mentioned he "had problems with his knee." Tr. 58. Mr. Melton said that these conversations could have been either when Friede Goldman or Signal was the employer. Claimant spoke of his knee problems to Mr. Melton on two or three occasions, but Mr. Melton could not recall the dates. Tr. 59. Mr. Melton never examined Claimant's knee. He was not aware of anyone else named David who worked in the safety or medical office. He did not recall having lunch with Claimant to discuss Claimant's injury.

On cross-examination, Mr. Melton testified that he was in the medical office on occasion, and he had access to routine, over-the-counter medical items. He said he had wrapped worker's extremities with Ace bandages, but did not recall doing so for Claimant, though he "could have." Tr. 61. Mr. Melton stated that he was of the impression that Claimant's injury had occurred while Friede Goldman was the employer. Tr. 62. On redirect, Mr. Melton stated that he "had no problem" with Claimant pursuing knee surgery because "it was not on Signal at that time." Tr.

64. He admitted that if Signal had been in charge of the operation at that time, in the back of his mind he may have thought that Claimant's knee may heal and they "could avoid the physician problem." Tr. 65. On recross, Mr. Melton testified that Claimant never complained that his knee had worsened.

Testimony of Leonard J. Maillho

Mr. Maillho testified that he is employed by Signal as the Human Resources Director and has held the position since January 2003. Tr. 67. He previously worked for Friede Goldman as Employee Relations Director. He explained that it was his understanding that when Signal assumed Friede Goldman's business, Signal was only going to take the employees it needed. He was aware that Signal required Friede Goldman employees to complete applications, though he stated he did not have first-hand knowledge of the process. As the Human Resources Director, he had access to personnel records, and stated that Signal required Friede Goldman employees who desired employment with Signal to complete an application and undergo a pre-employment physical.

Mr. Maillho identified Claimant's personnel records located in Employer's Exhibit 12 as containing an application for employment with Signal, an offer of employment by Signal, and a "Post-Offer Work Capacity Evaluation" form. Mr. Maillho was shown a copy of the Post-Offer Work Capacity Evaluation form which was contained in Dr. Doster's records and stated that it differed from the form in Claimant's personnel file in that the form in Dr. Doster's records references a history of a strained ligament three weeks prior to the date of December 19, 2002. Tr. 74. Mr. Maillho could not explain the procedure for completing forms that was used in December 2002. He did not know why the Signal records did not contain this document.

Mr. Maillho testified that he had a meeting with Claimant "sometime after January" to ensure that Claimant worked within the restrictions he had received from Dr. Cooper. He agreed that the restrictions were imposed around April 25, 2003, and stated that at that time was when he first became aware of an issue with Claimant's knee. Tr. 79. He explained that Claimant was offered modified duty on a different rig than the one to which he was assigned, but Claimant opted to remain with his crew on his original rig, so he was offered work duties which were within his restrictions. Mr. Maillho stated that Claimant told him he had not injured his knee while working at Signal, rather his knee condition "related back to an injury he had while working with Friede Goldman." Tr. 82. Mr. Maillho was aware that Claimant continued to work as a structural fitter for almost four months, but was not aware whether Claimant worked additional hours. It was Mr.

Maillho's understanding that Claimant did not have any work restrictions until April 2003.

On cross-examination, Mr. Maillho recalled a letter Claimant sent to him addressing his "dilemma" after Friede Goldman denied Claimant's workers compensation claim. Mr. Maillho replied to Claimant and stated that he understood that Claimant needed medical care, and if Claimant was willing to sign a subrogation agreement, Mr. Maillho would make arrangements with Carrier to pay for Claimant's MRI. Mr. Maillho was not aware of whether this occurred. Tr. 84. Mr. Maillho estimated that Claimant left Signal's employ on May 31, 2003 due to a general reduction in force as a result of Signal not having a backlog of jobs. Claimant was not the only employee laid off at that time.

Mr. Maillho agreed that Claimant's personnel files indicated that he passed Signal's pre-employment physical examination. He said that Claimant never reported to him an injury occurring at Signal, nor did he report conditions which worsened his knee injury while he was employed at Signal. On redirect, Mr. Maillho agreed that an email, located at Employer's Exhibit 12, p.28, sent by Cliff Lane on April 23, 2003 stated that Claimant complained that his knee pain was becoming more frequent. Tr. 89. Mr. Maillho acknowledged a report, dated April 21, 2003, located at Employer's Exhibit 12, p. 32 was a follow-up report, but was not certain who completed the report. He read the report which indicated Claimant "stated that his right knee is swollen and has been hurting him quite some time, however now the pain has gotten worse." Tr. 91.

Medical Evidence

Vernon W. Doster, M.D.

Dr. Doster testified via deposition on December 15, 2004. His deposition is located at ECX 31 and EX 22. Dr. Doster practices ambulatory medicine, which he described as encompassing outpatient medicine, general family medicine, some occupational medicine and acute care. He is licensed to practice in Mississippi, but holds no board certifications. ECX 31, p.7.

After reviewing his records, Dr. Doster recalled Claimant coming to his office. Though he stated he did not remember Claimant, he did "surprisingly remember [the] exam somewhat." ECX 31, p.8. Dr. Doster saw Claimant for a routine pre-employment physical exam on January 10, 2003. ECX 24, p. 5. Dr. Doster stated that he requires patients to complete a history form, but did not require a work capacity evaluation form, so Dr. Doster opined that the Post-Offer

Work Capacity Evaluation Form contained in Claimant's records would have been a Signal-generated form which Claimant brought to the exam with him. Dr. Doster stated that because the form had his handwriting on it, he assumed that he had the form in front of him during Claimant's examination.

Dr. Doster testified that the handwritten notation on the form which stated "pull back muscle 1991" was not his handwriting, but that he did write the letter "R" in parentheses next to the question about knees. He stated he did not write "strained ligament" next to "knees," but he did write "approximate sign" three weeks" in parentheses regarding Claimant's knees. Dr. Doster said that someone had "filled in strained ligament" on the form. He said he inquired about the strained ligament and Claimant reported that the strain occurred approximately three weeks prior to the exam. Dr. Doster did not recall Claimant stating where he strained the ligament or how it occurred. Dr. Doster clarified that Claimant "very well may have" relayed such information but Dr. Doster did not write all the details of the history. He explained that since Claimant was there for a drug test, had Dr. Doster not had the information about Claimant's knee in front of him, he may have assumed Claimant to be a normal, healthy adult. But because he saw the response on the history form, he was "sure" that he asked Claimant the particulars of the injury, but he did not recall doing so. ECX 31, p,14.

Dr. Doster stated that Claimant passed the physical examination. The form completed by Dr. Doster on January 10, 2003 indicated that Claimant had no work restrictions. ECX 31, p.32. He said that he was concerned about Claimant's history of shoulder injury "and not the positive response to the knee." ECX 31, p.15. His impression was that Claimant had previous serious injury to his shoulder and was performing heavy work, so Dr. Doster did not believe that the shoulder injury would prevent him from continuing to perform heavy work and was not concerned about a strain in Claimant's knee.

Dr. Doster stated that the notation on Claimant's form pre-approving him for x-rays was not "standard," but "someone had a reason" for preapproval, most likely they assumed that Dr. Doster would want x-rays performed. Dr. Doster had no knowledge or record of seeing Claimant again following the pre-employment physical examination.

On cross-examination, Dr. Doster testified that he did not know the reason Claimant was sent for a pre-employment physical. He described the usual procedure when a worker is sent for a physical exam as receiving a phone call from an employer, then the worker will present to the office with some forms. Dr.

Doster stated that the notation on Claimant's form approving x-rays was probably written by one of his staff members. He did not send Claimant for x-rays because he felt they were unwarranted, because a ligament injury would not appear on an x-ray. He recalled observing Claimant sitting and functioning normally with regard to his knee during the examination. Dr. Doster stated that if there had been a problem with Claimant's knee, he would have noted it under the heading "joint deformities on physical exam," and the only notation references Claimant's shoulder.

Dr. Doster was shown the copy of the Post-Offer Work Capacity Evaluation located in Signal's personnel files and stated that it appeared to be a partially completed version of the form he wrote on. ECX 31, p.22. Dr. Doster stated he did not write any of the entries on the form. He stated that numbers one and two on the form were circled in order to "highlight positive responses," and supposed someone in his office could have circled the items but did not know.

On further examination, Dr. Doster was asked to read some notations he made which were indiscernible. He read the comments he included under the heading "impression of mental and physical fitness or other pertinent comments," and stated: "History, injuries and surgeries, laceration and fracture at shoulder. Patient advised not to take present medication before or during work, and that he will probably be more prone to discomfort following heavy or prolonged utilization of the right shoulder." ECX 31, p.24.

Dr. Doster clarified that the pre-approval of x-rays contained on Claimant's evaluation form was in the form of a purchase number that had been provided in advance. He stated that the approval was "generic," in that it allowed for x-rays of either or both knees, or parts of Claimant's back. Dr. Doster discussed his radiology report and stated that he found no osseous abnormalities and no acute abnormalities.

Kevin S. Cooper, M.D.

Dr. Cooper's records are located at Claimant's Exhibit 5, Employer's Exhibit 17, and Employer/Carrier's Exhibit 28. Dr. Cooper's records indicate that he first saw Claimant and placed restrictions on Claimant on April 25, 2003, including climbing, squatting, kneeling and carrying fifty to one hundred pounds. He noted that Claimant had right knee pain from the injury he sustained in January 2003, and recommended an MRI in order to accurately diagnose Claimant's knee pathology, stating "only then can further recommendations be made." CX 5, p.1.

Claimant underwent an MRI at Springhill Memorial Hospital on May 20, 2003 which revealed a tear of the posterior horn and body of the medial meniscus, as well as a small right knee effusion and baker's cyst. CX 5, p.4. Dr. Cooper saw Claimant on June 4, 2003, and noted that Claimant needed a referral to an orthopedic surgeon "ASAP" for surgical repair of his knee. CX 5, p.5. Dr. Cooper's restrictions included climbing, squatting, kneeling, and carrying fifty to one hundred pounds. CX 5, p.1.

Suanne White-Spunner, M.D.

Dr. White-Spunner is an orthopedic surgeon; her records are located at Claimant's Exhibit 4, Employer's Exhibit 19, and Employer/Carrier's Exhibit 27.[6] Dr. White-Spunner saw Claimant on June 11, 2003. She noted that x-rays of Claimant's knee were unremarkable, but the MRI showed a medial meniscus tear. Dr. White-Spunner's impression was medial meniscus tear, and she suspected that twisting his knee while coming down the stairs in January was the cause of the injury, because that was a "typical mechanism of injury to the meniscus."

Dr. White-Spunner recommended arthroscopic surgery. She noted that there was some confusion as to who would pay for the surgery, but tentatively scheduled surgery for July 1, 2003. The records contain a note dated June 24, 2003 which indicates that workers compensation denied the claim, and Claimant's private insurance was terminated on May 31, 2003. The note stated that Claimant was instructed to call Dr. White-Spunner's office when his "insurance situation" was resolved and noted "case cancelled." EX 19, p.8.

Springhill Memorial Hospital

Springhill Memorial Hospital's records are located at Claimant's Exhibit 7, Employer's Exhibit 18, and Employer/Carrier's Exhibit 25. The records relate to the MRI ordered by Dr. Cooper which Claimant underwent at Springhill Memorial and include a copy of the MRI report. There is also a copy of the bill from the MRI which totals $966.75. CX 7, p.7.

H. Todd Coulter, M.D. / Midway Family Clinic

Dr. Coulter's records are located at Employer's Exhibit 20 and Employer/Carrier's Exhibit 26. The records indicate that Claimant saw Dr. Coulter as early as November 2000. Dr. Coulter treated Claimant for his shoulder pain and

[6] References will be made to Employer's Exhibit because it is more complete than Claimant's and Employer/Carrier's versions of Dr. White-Spunner's records.

treatment consisted of medication and referrals to orthopedists and physical therapy at Y2K Rehab & Physical Therapy Clinic in Biloxi. EX 20, p.109.

The records indicate that Dr. Coulter saw Claimant approximately once per month from 2000 through August 2004. Dr. Coulter prescribed Lortab and Vicoprofen throughout the course of treatment. EX 20, pp. 3-4. Included in Dr. Coulter's records are multiple forms entitled "Patient Comfort Assessment Guide," wherein Claimant rated his pain and efficacy of treatment he received. There is no mention of knee pain contained in Dr. Coulter's records until April 3, 2003, and Dr. Coulter recommended Claimant undergo an ultrasound. ECX 26, p.46. On May 5, 2003, Claimant indicated that walking on his knee made his pain worse. ECX 26, p, 42. Claimant continued to list "right knee pain" on his monthly "patient comfort assessment guides for the remainder of his visits with Dr. Coulter. Dr. Coulter discharged Claimant from his care on August 26, 2004, stating that after a review of Claimant's records, the conclusion was reached that the "degree and chronicity" of Claimant's medical problems exceeded the Midway Clinic's scope of practice. ECX 26, p. 1.

Findings of Fact and Conclusions of Law

The following findings of fact and conclusions of law are based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing and upon an analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. In evaluating the evidence and reaching a decision in this case, I have been guided by the principles enunciated in *Director, OWCP v. Greenwich Collieries (Maher Terminals)*, 512 U.S. 267, 28 BRBS 43 (1994), that the burden of persuasion is with the proponent of the rule. Additionally, as trier of fact, I may accept or reject all or any part of the evidence, including that of medical witnesses, and rely on my own judgment to resolve factual disputes or conflicts in the evidence. *Todd Shipyards v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The Supreme Court has held that the "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, violates Section 556(d) of the Administrative Procedures Act. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (1994).

Causation

Section 20(a) of the Act provides a claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm, and that employment conditions existed which could have caused,

aggravated, or accelerated the condition. *Merrill v. Todd Pacific Shipyards Corp*., 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Building Co.*, 23 BRBS 191 (1990). The Section 20(a) presumption operates to link the harm with the injured employee's employment. *Darnell v. Bell Helicopter Int'l, Inc.*, 16 BRBS 98 (1984).

Once the claimant has invoked the presumption, the burden shifts to the employer to rebut the presumption with substantial countervailing evidence and show that the claim is not one "arising out of or in the course of employment." 33 U.S.C. §§ 902(2), 903; *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283 (5th Cir. 2003); *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept to support a conclusion. *Sprague v. Director, OWCP,* 688 F.2d 862, 865 (1st Cir. 1982). If the employer meets its burden, the Section 20(a) presumption is rebutted and disappears, and the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

In this case, I find that Claimant has invoked the Section 20(a) presumption. Claimant testified that he twisted his knee on January 11, 2003, while descending a flight of stairs. Mr. Steele, Claimant's helper, testified that he was with Claimant and heard Claimant complain of pain and noted that Claimant had to sit down because of the pain in his knee. Mr. Brewer, Claimant's supervisor the day of the accident, testified that Claimant reported that he hurt his knee. Mr. Sprouse, who was working as a safety representative the day of the accident, testified that Claimant came to the medical office and reported knee pain. Several months later, Dr. White-Spunner determined that Claimant had a medial meniscus tear which was a result consistent with the way Claimant described the occurrence of his injury. Accordingly, Claimant has established that he suffered a harm, a knee injury, and that working conditions existed, namely, twisting his knee while descending stairs, which could have caused the harm.

Because Claimant has invoked the Section 20(a) presumption, his employer at the time of the injury bears the burden of presenting substantial evidence to the contrary. Friede Goldman argues that the combination of Claimant not seeking medical care for several months, the medical records of Dr. Doster indicating that Claimant possibly had mentioned a strained ligament three weeks prior to the injury, and Claimant's uncorroborated or contradicted testimony amounts to substantial evidence sufficient to rebut the Section 20(a) presumption. I disagree. Dr. Doster's testimony regarding Claimant's possible pre-injury ligament strain

was equivocal and vague. Dr. Doster could not recall whether he asked Claimant about how he injured his knee or the effects of the injury. He stated that if there had been "a problem" with Claimant's knee, he would have noted it on physical exam, but did not do so. Neither Dr. Doster's records nor testimony contradict Dr. White-Spunner's impressions. Friede Goldman claims that Claimant's testimony is contradicted, but cannot argue that the testimony of at least three individuals indicating that Claimant reported knee pain to them on the day of the accident is contradicted. Accordingly, I find that Claimant has invoked the Section 20(a) presumption that he injured his knee on January 11, 2003, while in the employment of Friede Goldman, and Friede Goldman has not rebutted the presumption by presenting substantial evidence to the contrary.

Responsible Employer

In a case where two or more employers may be responsible for a claimant's work-related injury or disease, the determination of the employer responsible for the payment of the claimant's benefits turns on whether the claimant's condition is the result of the natural progression or an aggravation of a prior injury. If a claimant's disability results from the natural progression of the first injury, then the claimant's employer/carrier at the time of the first injury is the responsible party. If the conditions of employment with a subsequent employer thereafter aggravated, accelerated, or combined with the earlier injury, resulting in the claimant's disability, the employer/carrier at that time is the party responsible for the payment of benefits thereafter. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986); *McKnight v. Carolina Shipping*, 32 BRBS 165, aff'd on recon. en banc, 32 BRBS 251 (1998). The aggravation of an underlying condition need not be produced by an identifiable traumatic incident, but may be caused by cumulative trauma resulting from work activities or conditions. *Found. Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991); *Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986); *Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991). Section 20(a) of the Act is inapplicable to a determination of the responsible party. *Buchanan v. Int'l Transp. Serv.*, 31 BRBS 81 (1997). Therefore, each employer bears the burden of persuading the factfinder, by a preponderance of the evidence, that the claimant's injury is due to the injury with the other employer. *Buchanan v. Int'l Transp. Serv (Buchanan II)*, 33 BRBS 32, 35 (1999).

In this case, Friede Goldman Halter (the first employer) has the burden of proving, without benefit of a further presumption, that there was a new injury or aggravation during Claimant's subsequent employment with Signal (the second

employer) in order to be relieved of liability as the responsible party. Signal, on the other hand, must prove that Claimant's condition is solely the result of the injury he suffered while working for Friede Goldman in order to escape liability. A determination as to which is the responsible employer requires the administrative law judge to weigh the evidence as a whole, and to arrive at a conclusion supported by substantial evidence. *Buchanan v. Int'l Transp. Serv.*, 31 BRBS 81, 85 (1997).

In cases involving multiple traumatic injuries, whether from an identifiable traumatic incident or cumulative trauma caused by work activities or conditions, the responsible employer determination depends on the cause of the claimant's ultimate disability; only if the disability is at least partially the result of trauma sustained in employment with a subsequent employer is the subsequent employer liable. *See Metropolitan Stevedore Co. v. Crescent Wharf & Warehouse Co. [Price]*, 339 F.3d 1102, 1105, 37 BRBS 89, 90(CRT) (9th Cir. 2003). If, on the other hand, the ultimate disability results from the natural progression of the initial injury, and not from any subsequent trauma, the first employer remains liable. *Id.*

Friede Goldman argues that Claimant continued to work after injuring his knee, and though his job duties did not change, his hours increased from fifty hours per week with Friede Goldman to seventy hours per week with Signal. Friede Goldman claims that Claimant's conditions of employment aggravated his knee injury, and Claimant himself testified that his knee pain was worse while working for Signal. Therefore, Friede Goldman asserts that Signal is the employer responsible for Claimant's disability because the conditions of his employment aggravated his condition.

Signal, on the other hand, contends that Claimant's resulting disability is a natural progression of the injury he suffered on January 11, 2003, which renders Friede Goldman liable for his disability. Signal points to the fact that Claimant testified that he did not suffer any other injury after the injury he sustained on January 11, 2003, and points out that there is no medical evidence which indicates that Claimant's work for Signal aggravated or accelerated his condition. To the contrary, Dr. White-Spunner related the need for surgery to Claimant's January 2003 episode at work while in the employment of Friede Goldman.

Signal is correct in its assertion that there is no medical evidence suggesting that Claimant's condition was aggravated by his employment. Granted, Claimant testified that his knee pain worsened during late January or early February, but he altered the way he worked in order to continue working with knee pain. He said he

would ride with a foreman from the gates to the rig he worked on, approximately half a mile, because the pain in his knee was "excruciating." Tr. 143. Claimant testified that he complained of pain at work, and that his pain reached a point in April when he needed to obtain medical care. Tr. 151.

Signal's personnel records contain correspondence from Cliff Lane to Carrier dated April 23, 2003 indicating that Claimant complained that "his knee pain is getting more frequent 'but still not hurting all the time.'" EX 12, p.28. In his deposition and testimony at the hearing, Claimant stated he did not injure his knee after January 11, 2003. He also stated he did not know what caused his pain, but that it could be "daily usage." EX 10, p.10. He stated that every time he went to the medic, it was related to problems from the January 11, 2003 injury. EX 10, p. 10.

As a layman, all Claimant knew was that he had knee pain; as to the cause, I must look to the medical evidence in the record. The physicians who treated Claimant were not deposed, and none of them specifically opined on whether Claimant's condition was aggravated by his working conditions. Friede Goldman has introduced no medical evidence indicating that Claimant's work with Signal constituted an aggravation. The only medical opinion of record is found in Dr. White-Spunner's notes. She indicates at the outset that Claimant had "continued working" after his injury, but noted that "he has altered his gait for fear of [his knee] giving out on him." EX 9, p. 1. She noted that he was a "structural iron worker at Signal International." It was Dr. White-Spunner's impression that Claimant had a medial meniscus tear, and "[w]ith swelling occurring and sharp pain and coming down the stairs and twisting, I suspect that this is the cause of the injury, as this was a typical mechanism of injury to the meniscus." Therefore, Dr. White-Spunner was aware of Claimant's employment with Signal, but attributed his medial meniscus tear to the accident on January 11, 2003.

Also, Claimant testified that he tried to "work smart" after the January 11, 2003 accident, meaning that he was more conscious of his surroundings and would attempt to avoid things he thought would cause knee pain or reinjury to his knee. He testified that he did not squat or stoop, and tried to avoid walking by riding with a foreman. Tr. 144. In April, Dr. Cooper placed restrictions on Claimant against climbing, squatting, kneeling and carrying fifty to one hundred pounds. Claimant did not know what caused his pain, but stated that he did not suffer another injury and his job duties did not change. The only change in his working conditions was the increase in hours.

Given the above, I find that Claimant's disability of a medial meniscus tear was the natural progression of the injury he sustained on January 11, 2003. The relevant evidence indicates that Dr. White-Spunner opined that the accident was the cause of Claimant's injury, and Claimant testified that while working, he attempted to avoid performing tasks which would further injure his knee. He was then placed under restrictions by Dr. Cooper to ensure that he would not reinjure his knee. The key determination in this case is the cause of Claimant's ultimate disability, and I find that, based on a preponderance of the evidence, Claimant's disability is due to the injury he sustained on January 11, 2003. Accordingly, Friede Goldman Halter is the responsible employer.

Nature and Extent

Having established an injury, the burden now rests with Claimant to prove the nature and extent of his disability. *Trask v. Lockheed Shipbuilding Constr. Co.*, 17 BRBS 56, 59 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement. *Id.* at 60. Any disability before reaching MMI would thus be temporary in nature.

The date of maximum medical improvement (MMI) is defined as the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. The date on which a claimant's condition has become permanent is primarily a medical determination. *Mason v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984). The date of maximum medical improvement is a question of fact based upon the medical evidence of record regardless of economic or vocational consideration. *La. Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22 (5th Cir. 1994); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 186 (1988); *Williams v. Gen. Dynamics Corp.*, 10 BRBS 915 (1979). The mere possibility of future surgery does not preclude a finding that a condition is permanent. *Worthington v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 200, 202 (1986). However, if surgery is anticipated, maximum medical improvement has not been reached. *See McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9, 12 (2000) (citing *Kuhn v. Associated Press*, 16 BRBS 46 (1983)).

The parties have stipulated that Claimant's date of maximum medical improvement is "unknown." Because Claimant is in need of surgery and none of the physicians who have treated Claimant have indicated that he has reached maximum medical improvement, any disability he has will be temporary in nature.

The question of extent of disability is an economic as well as medical concept. *Quick v. Martin*, 397 F.2d 644 (D.C. Cir. 1968); *Eastern S.S. Lines v. Monahan*, 110 F.2d 840 (1st Cir. 1940). A claimant who shows he is unable to return to his former employment due to his work related injury establishes a *prima facie* case of disability. The burden then shifts to the employer to show the existence of suitable alternative employment. *P & M Crane Co. v. Hayes*, 930 F.2d 424, 420, 24 BRBS 116 (5th Cir. 1991); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038, 14 BRBS 1566 (5th Cir. 1981). Furthermore, a claimant who establishes an inability to return to his usual employment is entitled to an award of total disability compensation until the date on which the employer demonstrates the availability of suitable alternative employment. *Rinaldi v. Gen. Dynamics Corp.*, 25 BRBS 128 (1991). If the employer demonstrates the availably of realistic job opportunities, the employee's disability is partial, not total. *Southern v. Farmer's Export Co.*, 17 BRBS 24 (1985). Issues relating to nature and extent do not benefit from the Section 20(a) presumption. The burden is upon Claimant to demonstrate continuing disability, whether temporary or permanent, as a result of his accident.

Here, Claimant has shown he cannot return to his previous work as a shipfitter as evidenced by the restrictions placed upon him by Dr. Cooper in April 2003. Dr. Cooper restricted Claimant from climbing, squatting, kneeling and carrying fifty to one hundred pounds. CX 5, p.2. Claimant was working modified duty at Signal within his restrictions. Friede Goldman argues that subsequent to being laid off by Signal, Claimant worked a variety of jobs, including performing light duty versions of his previous shipfitting duties, which prevents Claimant from establishing continuing disability. I disagree. The fact that the employee had a short-term job post injury does not establish that he is not now totally disabled unless the employer shows that such a job is currently available. *See Carter v. Gen. Elevator Co.*, 14 BRBS 90, 97 (1981); *Jarrell v. Newport News Shipbuilding & Dry Dock Co.*, 9 BRBS 734, 740 (1978). In *Carver*, the Board held that the claimant's short-term employment at a gas station did not "rise to the level of an ongoing actual employment opportunity" and did not provide a basis for an award of partial versus total temporary benefits. *Id*. at 97.

Granted, since leaving Signal, Claimant has also worked in his usual occupation, but only in a modified capacity, as he did when he worked for Signal, pursuant to Dr. Cooper's restrictions. Dr. White-Spunner and Dr. Cooper have both indicated that Claimant's knee requires surgical repair. The work Claimant performed with restrictions is not the same work he performed prior to his injury of January 11, 2003, as the restrictions against climbing, squatting, kneeling and

carrying fifty to one hundred pounds are not consistent with the job of a shipfitter. Therefore, I find that Claimant has demonstrated a present inability to perform his prior employment, and Friede Goldman has the burden of establishing the availability of suitable alternative employment.

In order to establish suitable alternative employment, an employer must show Claimant is capable of working, even if within certain medical restrictions, and there is work within those restrictions available to him. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1042-1043, 14 BRBS 156, 164-165 (5th Cir. 1981), *rev'g* 5 BRBS 418 (1977). Friede Goldman has introduced no evidence of suitable alternative employment; accordingly, since leaving the employ of Signal, Claimant remains totally temporarily disabled, except on the few occasions he has found temporary work within his restrictions.

Concerning his sporadic, temporary employment, Claimant testified that he worked for Delta Tug from, he guessed "November to somewhere in early February" for either eight to ten weeks or "approximately six to eight weeks" and worked roughly "three days a week." EX 12, p. 10; Tr. 128. Claimant estimated that he earned at most $3,250 from Delta Tug. Tr. 174. Claimant also worked for Austin Maintenance, whose payroll records indicate it employed Claimant from April 28, 2004 to May 13, 2004 for a total of 104.5 hours. EX 14, p. 2. Claimant stated that this job consisted of ten work days. Tr. 160. Claimant testified that he worked performing trailer repair for Mr. John Brannon for "probably about five or six weeks." Tr. 129. Claimant said he was paid cash for this job and earned approximately $2,496 at fifteen dollars per hour, which arguably means that Claimant worked 166.4 hours for Mr. Brannon. Finally, Claimant worked driving a truck for Mr. Russell Collier. Mr. Collier paid Claimant one hundred dollars per trip and Claimant made six trips. Tr. 131.

In his brief, Claimant agrees that the responsible employer is entitled to a credit or offset against its liability for Claimant's disability as a result of wages Claimant earned from other employers. Claimant estimates that Friede Goldman should be entitled to a credit of 76 days.[7]

I agree with Claimant's computation and agree that Friede Goldman is entitled to an offset against its liability for the days Claimant worked; however, the Board has noted that a "credit" is not the proper award to make where a claimant

[7] Claimant's estimation of 76 days is comprised of 30 days he worked at Delta Tug (three days per week times ten weeks), plus the ten day plant shutdown job at Austin Chemical, thirty days working for Mr. Brannon, and six days work for Mr. Collier (30 + 10 + 30 + 6 = 76).

has earned wages from temporary employment; rather, the appropriate award consists of temporary total disability "punctuated by temporary partial awards" for the periods the claimant was engaged in part time employment. *See Carter v. Gen. Elevator Co.*, 14 BRBS 90, 98 (1981).

However, in *Carter*, the claimant worked at one other job and could easily identify the dates worked and had a steady schedule. That situation is unlike the present scenario where Claimant's work was not only temporary but sporadic. Records were not kept of the dates Claimant worked for various employers, the nature of the truck driving job required him to work one day and not the next, and all the jobs were temporary in nature, so it would be difficult to award temporary partial disability in this case. Therefore, I find an equitable remedy to be a credit or offset to Friede Goldman for the 76 days Claimant earned wages from other employers.

Medicals

In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. *Parnell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R. § 702.402. A claimant has established a *prima facie* case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 257-58 (1984). The claimant must establish that the medical expenses are related to the compensable injury. *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130 (1981); *Suppa v. Lehigh Valley R.R. Co.*, 13 BRBS 374 (1981). The employer is liable for all medical expenses which are the natural and unavoidable result of the work injury, and not due to an intervening cause. *Atl. Marine v. Bruce*, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981).

In the present case, when Claimant requested medical treatment, Signal attempted to send him to Dr. Doster, who stated he would not see Claimant without permission to perform an MRI or x-ray. EX 12, p. 27. Claimant was later sent to Dr. Cooper by Signal. Ex 12, p. 39. Claimant designated Dr. Cooper as his choice of physician on April 16, 2003. CX 9, p. 5. Dr. Cooper determined that Claimant needed an MRI; CX 9, p. 1; EX 12, p. 53. Claimant underwent the MRI on May 20, 2003. CX 5, p. 3. Based upon the results of the MRI, Dr. Cooper referred Claimant to an orthopedic surgeon "ASAP for surgical repair." CX 5, pp. 4-5. Claimant thereafter saw Dr. White-Spunner who determined that surgery was

necessary and tentatively scheduled the arthroscopic debridement for July 1, 2003. CX 4, p. 2.

I find Claimant's medical care to be reasonable and necessary. Claimant's chosen physician, Dr. Cooper, recommended the MRI and referred Claimant to an orthopedist for surgical repair. Dr. White-Spunner thereafter recommended arthroscopic debridement. Therefore, Claimant is entitled to such reasonable and necessary medical expenses as relates to the treatment provided by Drs. Cooper and White-Spunner, and such expenses are the obligation of Friede Goldman.

Section 14(e) penalties

Under Section 14(e) an employer is liable for an additional 10% of the amount of worker's compensation due where the employer does not pay compensation within 14 days of learning of the injury, or fails to timely file a notice of controversion within 14 days. 33 U.S.C. § 914. In this instance, Friede Goldman controverted on November 13, 2003, and benefits have not been paid. Therefore, as Freide Goldman paid no compensation and did not controvert within 14 days of learning of injury, Section 14(e) penalties are assessed against Friede Goldman.

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

(1) Friede Goldman (hereinafter "Employer")[8] shall pay to Claimant compensation for temporary total disability benefits, commencing 15.2 weeks[9] after June 1, 2003 and continuing, based on an average weekly wage of $724.53;

(2) Employer shall pay or reimburse Claimant for all reasonable and necessary medical expenses, resulting from Claimant's injuries of January 11, 2003;

[8] There is no insurance carrier for Friede Goldman, and the company is in bankruptcy, but apparently there will be funds available through the trustee. Tr. 6.

[9] These weeks are derived from the 76 days of credit due Employer for wages Claimant earned following the termination of his employment with Signal. The exact dates of those earnings cannot be determined from the record, but inasmuch as Claimant acknowledged owing the credit, this seemed a fair resolve.

(3) Employer shall pay interest on all of the above sums determined to be in arrears as of the date of service of this ORDER at the rate provided by in 28 U.S.C. §1961;

(4) Pursuant to Section 14(e) of the Act, Employer shall be assessed penalties on all compensation not timely paid, the exact amount to be calculated by the District Director as heretofore set out;

(5) Claimant's counsel shall have twenty days from receipt of this Order in which to file a fully supported attorney fee petition and simultaneously to serve a copy on opposing counsel. Thereafter, Employer shall have ten (10) days from receipt of the fee petition in which to file a response; and

(6) All computations of benefits and other calculations which may be provided for in this ORDER are subject to verification and adjustment by the District Director.

So ORDERD this 7th day of April, 2005, at Metairie, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

CRA:bbd